



February 18, 2000

Mr. Lan P. Nguyen
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2000-0608

Dear Mr. Nguyen:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 133469.

The City of Houston (the "city") received a request for the names, addresses, and telephone numbers of patients receiving emergency medical services by city emergency service personnel from December 1, 1999 through January 5, 2000. You seek to withhold the requested information under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code. You have submitted a representative sample of the information at issue.¹

Access to emergency medical services ("EMS") records is governed by the provisions of section 773.091 of the Health and Safety Code. Open Records Decision No. 598 (1991). Section 773.091 of the Health and Safety Code (the Emergency Medical Services Act) provides in part:

(b) Records of the identity, evaluation or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

¹In reaching our conclusion, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

....

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

In our opinion, section 773.091(b) protects the requested records from public disclosure with the exception of responsive information pertaining to the “city of residence” of the patient which, pursuant to subsection (g), is not protected from disclosure by the section.

We note that the requestor contends that he is entitled to access to the requested records under subsections (e)(3) and (e)(7) of section 773.092. Section 773.092 sets out various exceptions to the confidentiality of EMS records as provided for in section 773.091. Subsection (e)(3) provides for disclosure of such records to “qualified persons to the extent necessary for management audits, financial audits, program evaluation, system improvement, or research, except that any report of the research, audit or evaluation may not directly or indirectly identify a patient.” Subsection (e)(7) provides for disclosure of EMS records to “individuals, corporations, or governmental agencies involved in the payment or collection of fees for emergency medical services rendered by emergency medical services personnel.” You contend that the requestor here has not demonstrated to the city that he is qualified under the above provisions to receive the requested records.

In our opinion, since disclosure of the requested records under section 773.092 would be a disclosure outside of the scope of chapter 552, which provides for the attorney general’s determining whether requested information may be withheld from *public* disclosure,² it is for the city and not this office to determine whether the requestor here is qualified, under the circumstances, to receive the requested information under section 773.092.

Accordingly, with the exception of the city of residence information, which pursuant to subsection (g) of section 773.091 is not protected from disclosure by that section, you must withhold the requested records from public disclosure under section 773.091 of the Health and Safety Code. The city should itself determine whether the requestor is qualified to receive the requested information under the limited disclosure provisions of subsections (e)(3) and (e)(7) of section 773.091.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

²Section 552.023 of the act also provides for disclosure to an individual who has a special right of access to information protected from public disclosure by laws intended to protect such individual’s privacy. This provision is not relevant to the issue of disclosure to the requestor here of information under the provisions of Health and Safety Code section 773.092.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



William Walker
Assistant Attorney General
Open Records Division

WMW/ljp

Ref: ID# 133469

Encl. Submitted documents

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